IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.10124 of 1991

Date of Decision : November 27, 2006.

Jagdish Chander Verma ..... Petitioner

Vs.

The Haryana State Electricity Board,
Panchkula and another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.S.P.Jain, Senior Advocate
with Mr.Dheeraj Jain, Advocate
and Mr.Vijay Chaudhary, Advocate
for the petitioner.

Mr.Babbar Bhan, Advocate
for Mr.Vinod S.Bhardwaj, Advocate
for the respondents.

* * *

P.S.Patwalia, J. :

The petitioner who was an employee of the Punjab State Electricity Board, joined the Haryana State Electricity Board as a Sub-station Attendant after the re-organisation of State of Punjab in 1966. Thereafter the designation of the post of Sub-station Attendant was changed to Junior Engineer (II). He was thereafter promoted as Junior Engineer (I) in the year 1981. The petitioner contends that he was to cross his efficiency bar on 1.11.1984 and in spite of the fact that his case was sent by the

Superintending Engineer (OP) Circle, Kurukshetra, he was not permitted to cross the efficiency bar. By a letter dated 1.3.1989, the petitioner was conveyed adverse remarks in his Annual Confidential Report for the period 9.5.1981 to 12.9.1981. The said letter reads as hereunder :-

"Memo No. CJ-57-SS/J-7
Dated : 1.3.1989

Subject : Annual qualification report

Your qualification report for the period from 9.5.1981 to 12.9.1981 contains the following adverse remarks :-

1. *You are not trust-worthy.*
2. *Your knowledge of work, departmental rules and delegation of powers to officers is average.*
3. *You do not maintain good control over the staff/labour working under your control.*
4. *You are careless to your work.*
5. *You do not keep good terms with your colleagues.*
6. *Your over-all work is assessed as average.*
7. *Your honesty is doubtful.*

The above facts are brought to your notice and you are advised/warned to show marked improvements in your next Q.R.

Please acknowledge receipt of this memorandum.

Sd/- Administrative Officer,
for CE (OP) North, HSEB, Hissar."

On 21.9.1989, the petitioner was conveyed adverse remarks in his Confidential Report for the period 11.7.1983 to 31.3.1984. The said letter is as hereunder :-

"Memo No. Ch.Cu-62/82/SSO/02
Dated : 21.9.1989

Subject : Annual Qualification report

Your qualification report for the period from 11.7.83 to 31.3.1984 contains the following adverse remarks :-

S.N.	*Subject*	*Adverse Remarks*
1.	*Knowledge of works on which employed and quality of works.*	*Average*
2.	*a) Proficiency in electrical Engg*	*Average*
	b) Proficiency in maintenance of Elect machinery	*Average*
3.	*Whether his work was out-standing/very good/ good/average/below average.*	*Average*

The above facts are brought to your notice and you are advised/warned to show marked

improvements in your next Q.R.

Please acknowledge receipt of this memorandum.

This issues with the approval of CE (OP) N HSEB Hissar.

Sd/- Administrative Officer,
for CE (OP) North, HSEB, Hissar."

It is the contention of the petitioner that he submitted a representation against the aforesaid remarks which was however not decided.

The petitioner was to attain the age of 55 years on 6.11.1990. He states that the Superintending Engineer (OP) Circle, Kurukshetra recommended his case to the higher authorities for extension of service by a letter dated 3.7.1990. It was mentioned therein that no charge-sheet etc. was pending against the petitioner and his work and conduct was reported to be satisfactory. In spite of this recommendation by an order dated 11.3.1991 the petitioner was compulsorily retired from the service of the Board. He was paid a cheque for three months' salary in lieu of notice.

The petitioner filed Civil Writ Petition No.4255 of 1991 challenging the said order. The said writ petition came up for hearing on 19.3.1991 on which date it was disposed of with a direction to the petitioner to make a representation to the Board and with a further direction to the Board to decide the same within two months by passing a speaking order. The petitioner thereafter made a representation which was rejected by the Board on 15.5.1991.

It is thereafter that the petitioner filed the present writ petition challenging the order dated 11.3.1991 vide which he was compulsorily retired and the order dated 15.5.1991 vide which his representation was rejected. The respondents have filed a reply denying that the petitioner had ever submitted any representation against the adverse remarks communicated to him. On merits it is stated that the integrity of the petitioner had been considered to be doubtful in the report for the period 9.5.1981 to 12.9.1981 which was within last ten years preceding the date of his compulsorily retirement. It is the case of the respondents that instructions dated 22.3.1990 have been issued by the State of Haryana which have been duly adopted by the Board which state as hereunder :-

> *".....The matter has further been considered by the State Govt. and it has been decided that while considering the cases of retention in service beyond the age of 50/55 years, the report of doubtful integrity of an employee pertaining to the period beyond the last ten years, may be ignored. However the instructions regarding placing the cases of those employees whose integrity has been suspect within this period continue to be in force and such cases would be placed before the Officers Committee consisting of the Chief Secretary to Govt. Haryana, the Financial Commissioner, the Administrative Secretary and Head of Department concerned."*

The respondents contend that since the petitioner's integrity had been doubted within the last ten years, he has been compulsorily retired.

The present writ petition was allowed by a Division Bench of this Court on 24.3.1992. The order of compulsory retirement dated 11.3.1991 was quashed by this Court. Against the aforesaid decision the Board had filed a Special Leave Petition before the Hon'ble Supreme Court being SLP No.1020 of 1992. Leave was granted in the same. After considering the matter on merits the Hon'ble Supreme Court set aside the judgment of the High Court and remanded the matter back for re-hearing to this Court. The Hon'ble Court had observed that the matter would have to be considered keeping in view the limits of permissible judicial review in such cases in the light of judgment of Hon'ble Supreme Court in the case of ***Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another*** reported as ***(1992) 2 Supreme Court Cases 299***. At the outset it is necessary to recapitulate the principles laid down by the Hon'ble Supreme Court in the said judgment. The same are as hereunder :-

> ***"34.*** *The following principles emerge from the above discussion :*
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> *(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.*
>
> *(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.*
>
> *(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial*

scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration.

That circumstance by itself cannot be a basis for interference."

Mr.Jain, learned counsel appearing for the petitioner contends that the report conveyed on 1.3.1989 related to a period of only four months from 9.5.1981 to 12.9.1981. He submitted that the Court should call for and examine the entire report for the period from 1.4.1981 to 31.3.1982 and only then draw any conclusion on the basis of the said report. He stated that the present report was only a part of the report of the complete year. Thus according to him no adverse influence could be drawn on the basis of the said report. He further contended that even this report of the year 1981 was conveyed after a period of eight years in 1989. It is his further contention that he had submitted a representation against the same which remained undecided. He also submitted that the efficiency bar which was withheld in the year 1984 was allowed to be crossed in the year 1986. Apart from this report the only other adverse remarks which were conveyed are for the period from 11.7.1983 to 31.3.1984. The said report is `average'. Even this had been conveyed after more than five years in the year 1989. Apart from this it is the contention of the learned counsel that all other record was `good' or better than that. It is therefore that the recommendation had been made by the Superintending Engineer (OP) Circle, Kurukshetra that the work and conduct of the petitioner was satisfactory and he may be allowed to continue beyond the age of 55 years.

Drawing my attention to the observations made by the Hon'ble Supreme Court in ***Baikuntha Nath Das's*** case (supra) learned counsel submitted that the government or the Review Committee would have to consider the entire service record before taking a decision in the matter. More importance should be placed on the record of later years. Still further

he submitted that this Court could examine the order and interfere by setting aside the same if it was found to be based on insufficient material or arbitrary.

As against this learned counsel for the respondents had contended that since the report as conveyed on 1.3.1989 stated that the honesty of the plaintiff was doubtful that alone was sufficient to order his compulsory retirement.

Though it is correct that even a single report of doubtful integrity may be sufficient to justify an order of compulsory retirement yet in the present case there is weight in the contention of the learned counsel for the petitioner that the present report is only for four months out of the entire year. Therefore learned counsel for the petitioner had contended that the report for the entire year should be called for to see the ultimate grading and assessment. Still further the order of retirement was issued on 11.3.1991. The said report relates to a period of May 1981 to September 1981. Therefore I desired to see the other reports of the petitioner from 1981 onwards as well. It is for this reason that after arguments in this case had been addressed on 6.9.2006, the case had been adjourned on the request of counsel for the Board to produce the complete confidential report for the year 1981-82 (1.4.1981 to 31.3.1982) and the reports for the subsequent years. The case was thereafter taken up on 27.9.2006. On that date learned counsel for the respondents had stated that the file containing the confidential reports was not traceable at present and he would get the same traced and produce the same if he was granted a further adjournment. The case was thereafter adjourned to 11.10.2006. On that date also the record was not produced and further adjournment to produce the record was sought. The matter was thereafter adjourned to 18.10.2006. On 18.10.2006

again a request was made for adjournment as the record was not available. The case was adjourned to 1.11.2006. On 1.11.2006 learned counsel for the respondents stated that no one had come from the respondent-Board either to assist the learned counsel or to produce the record. He therefore stated that he was not in a position to produce the record. On that day further arguments were heard and orders in this case were reserved.

On examination of the entire controversy it transpires that the whole case of the Board to justify the order of compulsory retirement hinges on the report for the period from 9.5.1981 to 12.9.1981. I am, however, of the opinion that the order of compulsory retirement in the present case cannot be justified on the basis of this report. This is primarily for the reason that the report is only for a period of four months. The complete report for the same period has not been produced or brought on record. To correctly appreciate the effect of the report of the part of the year conveyed to the petitioner it was necessary for this Court to have examined the actual report for the complete year. Even the subsequent reports have not been produced for perusal of this Court. In these circumstances I have no option but to draw an adverse inference against the respondents. This is all the more so since the report was conveyed after a period of eight years and in the meantime the petitioner had been allowed to cross the efficiency bar in the year 1986. I therefore find that in the present case compulsorily retiring the petitioner only on the basis of a part of the report for a complete year, is totally arbitrary. While reaching this conclusion I cannot lose sight of the fact that the Superintending Engineer (OP) Circle, Kurukshetra had in fact recommended the case of the petitioner for extension in service by his letter dated 3.7.1990 after mentioning that there was no charge-sheet etc. pending against the petitioner and that his work and conduct was satisfactory.

For the reasons aforesaid the order dated 11.3.1991 prematurely retiring the petitioner is quashed. The petitioner shall be considered to have retired from service on attaining the age of 58 years. He shall be entitled to all consequential benefits. The consequential benefits shall be granted to the petitioner within a period of three months from the date of receipt of certified copy of this judgment.

November 27, 2006 (P.S.Patwalia)
monika Judge